

DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

**Bowen Oil Field Services, Inc.  
Vernon, Lamar County, AL**

**USEPA ID NUMBER ALR000036897**

ORDER NO. 10-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department” or “ADEM”) and Bowen Oil Field Services, Inc. pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter “AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Bowen Oil Field Services, Inc. (hereinafter “Bowen”), which is assigned EPA Identification Number ALR000036897, operates a used oil re- refining and marketing company and a used oil transportation facility in Vernon, Lamar County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

#### DEPARTMENT'S CONTENTIONS

4. On December 16, 2009, a representative of the Department conducted an on-site compliance evaluation inspection (hereinafter "CEI") of Bowen. The CEI and a review of Bowen's compliance showed the following:

- a) **Pursuant to ADEM Admin. Code r. 335-14-17-.06(5)(b)1.,** containers and aboveground used oil tanks used to store or process used oil at processing and re-refining facilities must be in good condition (no severe rusting, apparent structural defects or deterioration). **Two 400-barrel used oil storage tanks located in the tank farm showed signs of severe rusting.**
- b) **Pursuant to ADEM Admin. Code r. 335-14-17-.06(5)(d)2.,** existing aboveground used oil tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system. The containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water. **Bowen did not provide a secondary containment system for the aforementioned used oil storage tanks.**
- c) **Pursuant to ADEM Admin. Code r. 335-14-17-.06(5)(f)1.,** containers and aboveground used oil tanks used to store or process used oil at processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil". **The aforementioned used oil storage tanks were not labeled or marked with the words "Used Oil".**
- d) **Pursuant to ADEM Admin. Code r. 335-14-17-.05(3)(d) and ADEM Admin. Code r. 335-14-8-.12(2),** a non-rail transporter must not transport used oil without having received an Alabama Used Oil Transport Permit in compliance with Rules 335-14-8-.09 through 335-14-8-.13.\

The conditions of an existing permit continue in force until the effective date of a new permit if: a complete application for a new permit was submitted at least 180 days prior to expiration of his existing permit; and if the Department through no fault of the permittee does not issue a new permit before the expiration date of the existing permit. **Bowen's Alabama Used Oil Transport Permit expired on March 1, 2009 and had not been continued as allowed by ADEM Admin. Code r. 334-14-8-.12(2) . On February 17, 2010, a representative of the Department contacted Bowen regarding the transport of used oil after the permit expired. The Department's representative was informed that 80 barrels (42 gallons each) of used oil had been transported from the subject site to another business owned by Mr. Larry Bowen where the used oil was burned between March 2009 and June 2009.**

- e) **Pursuant to ADEM Admin. Code r. 335-14-17-.02(2) made applicable by ADEM Admin. Code r. 335-14-17-.06(1)(b)4. and ADEM Admin. Code r. 335-14-17-.08(3)(b) , a generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under rule 335-14-17-.02(2), must keep copies of analyses of the used oil (or other information used to make the determination) for three years. Bowen did not maintain on site copies of analyses of used oil or other information used to make the determination that the oil transported to a burner met the specifications for used oil fuel.**

5. As a result of the CEI, Bowen was issued a Notice of Violation (NOV), dated January 27, 2010, which cited violations of hazardous waste regulations that were discovered during the CEI.
6. The Department has not received a response to the January 27, 2010 NOV.
7. On January 20, 2010, the Department received Bowen's application for an Alabama Used Oil Transport Permit.

Department staff reviewed the permit application and found it to be incomplete. Consequently, on March 2, 2010, the Department issued a Notice of Deficiency to Bowen notifying the facility that its application was not administratively complete and requesting additional information. Following the receipt of the requested information, the Department renewed Bowen's Alabama Used Oil Transport Permit on March 24, 2010.

8. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation(s) upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation.

9. In arriving at this civil penalty, the Department has considered the following:

a. **SERIOUSNESS OF THE VIOLATION:** Bowen failed to comply with used oil processor and re-refiner standards, used oil transporter and transfer facilities standards, and used oil fuel marketer standards. However, the Department is not aware of any health or safety threat or irreparable harm to the environment resulting from the violations.

b. **THE STANDARD OF CARE:** Bowen did not exhibit a standard of care commensurate with applicable regulatory standards.

c. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** Bowen transported used oil without having first obtained an Alabama Used Oil Transport Permit; however, the magnitude of any cost savings and resulting economic benefit, if any, is minimal.

d. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: Bowen responded promptly to correct the violations noted in the Department's January 27, 2010 NOV.

e. HISTORY OF PREVIOUS VIOLATIONS: Based on Department records, Bowen has no other historic record of violations of the AHWMMMA.

f. THE ABILITY TO PAY: Bowen has not alleged an inability to pay the civil penalty.

g. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has determined the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

11. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that the civil penalty herein is appropriate and consistent with the historical penalty range imposed by the Department for similar violations (see Attachment A, which made a part of the Department's contentions).

12. The Department neither admits nor denies Bowen's contentions. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### **BOWEN'S CONTENTIONS**

13. Bowen neither admits nor denies the Department's contentions. Bowen consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

## **ORDER**

THEREFORE, without admitting that it has violated any statutes or regulations, Bowen, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Bowen agree to enter into this Consent Order with the following terms and conditions:

A. Pursuant to Ala. Code § 22-22A-5(18)a.4. (2006 Rplc. Vol.), Bowen agrees to pay to the Department a civil penalty in the amount of \$8,000 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Bowen agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

Any check submitted to the Department pursuant to this order shall reference Bowen's name and address and the ADEM Administrative Order Number of this action.

C. That, commencing immediately upon the effective date of this Consent Order and henceforth, Bowen shall comply with all terms, conditions, and limitations of its Alabama Used Oil Transport Permit and the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.) and the regulations promulgated pursuant thereto.

D. That, no later than 45 days after the effective date of this Consent Order, Bowen agrees to ensure that all containers and aboveground used oil tanks used to store or process used oil are in good condition with no severe rusting, apparent structural defects, or deterioration and not leaking (no visible leaking) as required by ADEM Admin. Code rs. 335-14-17-.05(7)(d) and 335-14-17-.06(5)(b).

E. That, no later than sixty days after the effective date of this Consent Order, Bowen agrees to complete construction of a secondary containment system that meets the requirements of ADEM Admin. Code rs. 335-14-17-.05(7)(f) and 335-14-17-.06(5)(d). Bowen shall submit documentation of compliance with this provision to the Department within ten days of construction completion.

F. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

G. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations, which are cited in this Consent Order.

H. Bowen agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

I. For purposes of this Consent Order only, Bowen agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Bowen also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Bowen agrees to be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Bowen, including its contractors and consultants, which could not be

overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Bowen) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information agrees to be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control of and without the fault of Bowen, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

J. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; Bowen agrees not to object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

K. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Bowen does hereby waive any hearing on the terms and conditions of this Consent Order.

L. The parties agree that this Consent Order shall not affect Bowen's obligation to comply with any Federal, State, or local laws or regulations.

M. The parties agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

N. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

O. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

P. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Bowen of its obligations to comply in the future with any permit.

**Executed in duplicate, with each part being an original.**

BOWEN OILFIELD SERVICES

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

Richard Spears

(Signature of Authorized Representative)

Richard Spears

(Printed Name)

Operation Sup.

(Printed Title)

8-6-10

(Date Signed)

\_\_\_\_\_  
Lance R. LeFleur  
Director

\_\_\_\_\_  
(Date Executed)

## Attachment A

### Penalty Calculation Worksheet

**Bowen Oil Field Services, Inc.**

**Vernon, AL**

**ALR000036897**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation &amp; Base Penalty*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>
Failure to store used oil in structurally sound aboveground tanks	1	\$500	\$0	\$0
Failure to provide secondary containment for used oil storage tanks	1	\$2,500	\$0	\$0
Failure to mark used oil storage tanks with the words "Used Oil"	2	\$200	\$0	\$0
Failure to obtain an Alabama Used Oil Transport Permit	1	\$8,000	\$0	\$0
Failure to maintain documentation of on-spec used oil determinations	1	\$500	\$0	\$0
<b>Totals:</b>	6	\$11,700	\$0	\$0

**Economic**

**Benefit:** \$0

**Mitigating**

**Factors:** \$0

**Ability to Pay:** \$0

**Other Factors:** (\$3700)

**Civil Penalty:** **\$8,000**

#### Footnotes

\* See the "Department's Contentions" of the Order for a detailed description of each violation and the penalty factors